

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1543 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.2,32,500/- granted as compensation by award and decree dated 24.04.2006 in O.P.No.404 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle (for short, 'the Tribunal') as against the claim for Rs.10,00,000/- laid under Section 166(1) of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the jeep bearing registration No.AP 9V 6997 respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 23.04.2002 at about 5-45 a.m., while the petitioner was proceeding on his Hero Honda motorcycle bearing registration No.AP 21F 2455 and reached 4th mile at Dhanalakshmipuram near Kalyana Mandapam on Nellore-Methukuru Road, a jeep bearing registration No.AP 9V 6997 driven at high speed and in a rash and negligent manner belonging to the 1st respondent and insured with the 2nd respondent, came in opposite direction and dashed the motorcycle, due to which, he fell down and sustained injuries, he was immediately shifted to Government Hospital, Nellore and from there to Apollo Hospital, Madras. Even a crime was registered against the driver of the jeep by the Station House Officer, Nellore Rural Police Station. The petitioner claims that he sustained

permanent disability to his right hand and right leg at 20% each, resulting loss of earnings of Rs.15,000/- per month, and, therefore, sought Rs.10,00,000/- as compensation.

5. The 1st respondent, owner of the jeep, remained *ex parte*. The 2nd respondent resisted the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining three more witnesses as P.Ws.2 to 4 and marked Exs.A.1 to A.45 and Exs.C.1 to C.4 by summoning them in order to substantiate his claim made before the Tribunal. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue No.1 in favour of the petitioner; and on issue No.2, granted Rs.25,000/- towards two grievous injuries, Rs.7,500/- towards five simple injuries, Rs.50,000/- towards disability caused to his right hand and right leg at 20% each, Rs.50,000/- towards extra nourishment and transport and other charges and Rs.1,00,000/- towards pain and suffering, making a total amount of Rs.2,32,500/- along with interest at 7.5% per annum.

8. Aggrieved of the said order, the petitioner preferred the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record, more particularly, Ex.A.4 medical disability certificate and the medical bills.

9. Heard Sri Md.Saleem, learned counsel for the appellant, and Sri N.Mohan Krishna, learned counsel for the 2nd respondent-Insurance

Company. None appears for the 1st respondent-owner of the accident vehicle.

10. A perusal of the order under challenge would show that the Tribunal despite affirming that there was 20% disability to his right hand and right leg, placing reliance on the disability certificate Ex.A.4 issued by P.W.4, still, did not take into account the salary drawn by the petitioner in ascertaining the amount therefor. This apart, the submission of the learned counsel is that the reimbursement facility was not availed by the petitioner and the very fact that the original medical certificates have been filed before the Tribunal would reflect that the petitioner did not avail medical reimbursement facility and the Tribunal is not right in rejecting the amount spent by the petitioner towards medical expenses covered by the bills issued by various hospitals under which he has undergone treatment. Even in regard thereto, there is no definite finding recorded by the Tribunal and it is a case where an opportunity can be given to the petitioner to secure and place evidence from his authorities that he did not avail medical reimbursement so far as the medical bills are concerned filed and marked in the instant case. Further, it is according to the petitioner, he availed leave for 261 days on different spells and that he is entitled to have compensation for such leave period and he would have drawn for the spells he has availed leave had he not met with the accident. Thus, it is a case where it deserves to be remitted to the Tribunal for providing an opportunity to both sides to adduce further evidence including the witnesses already examined if needed.

11. In the result, the appeal is allowed setting aside the award and decree dated 24.04.2006 passed by the Tribunal in O.P.No.404 of 2004 and the matter is remitted to the Tribunal with a direction to dispose of the original petition in accordance with law, within a period

of six months from the date of receipt of a copy of the order. The Tribunal is further directed to afford chance to both sides to lead further evidence or further examine the witnesses already examined. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

10th February, 2015

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